

BOARD OF APPEALS CASE NO. 5119

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BEFORE THE

APPLICANT: Moran Properties LLC

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ZONING HEARING EXAMINER

**REQUEST: Variance to permit 3 lots on a
panhandle in the R1 District; 724 Hookers
Mill Road, Abingdon**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 2/7/01 & 2/14/01

HEARING DATE: March 19, 2001

Record: 2/9/01 & 2/16/01

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Moran Properties LLC, is seeking a variance, pursuant to Section 267-22G(1) of the Harford County Code, to permit more than one panhandle lot (3 panhandle lots proposed), in an R1, Urban Residential District.

The subject property is located at 724 Hookers Mill Road, Abingdon, MD 21009, and is more particularly identified on Tax Map 62, Grid 1-A, Parcel 693. The subject parcel consists of 6.31± acres, is presently zoned R1, Urban Residential District, and is located entirely within the First Election District.

Mr. Joseph Moran appeared on behalf of the Applicant and testified that he is a land developer and principal in Moran Properties LLC. The witness described the subject parcel and indicated that 7 lots total will be created for development as residential lots. Three of the lots proposed will be panhandles. The witness described the property as heavily wooded, with unique topography, which would require the creation of removal of large numbers of trees and the building of a private road throughout the property if panhandle lots were not created. The witness did not believe any material impact would result from the creation of panhandle lots and indicated that if a private road were, indeed, built, that 7 lots could be created on a cul-de-sac operation. The witness did not feel that creating a private road and the expense associated therewith was justified, particularly in light of the necessity for removal of several acres of trees on this property in order to accommodate a road. The avoidance of tree removal could be accomplished easily by the creation of panhandles, which again the witness did not feel would result in any material or adverse impact on any adjoining or neighboring properties.

Case No. 5119 – Moran Properties LLCC

Mr. Kevin Small appeared and qualified as an expert landscape architect and land planner. Mr. Small indicated that he is presently employed by Frederick Ward and Associates. By referring to Applicant's Exhibit No. 1, Mr. Small described in detail the parcel in question and the lots to be created. He indicated that there were three access points and eight (8) potential lots on this property. The witness stated that the shape of the parcel is very irregular and the back of the lot cannot be accessed unless it is a panhandle, so no matter what configuration were developed, there would be at least one panhandle. The creation of an additional two panhandles would simply avoid the expense of creating a private road and the removal of large areas of trees in order to accommodate that private road. Mr. Small described the parcel as entirely wooded with the exception of one existing house on the property. The witness indicated that practical difficulty would result if panhandle lots were not permitted on this property in that there would be a cost of a public road involved, which is prohibitive and unnecessary; there would be the necessity for removal of extensive amounts of trees and other foliage and; because of impervious surface area created by the public road, the storm water management pond would have to be bigger and an additional acre of trees would have to be removed to accommodate the increased size of that pond. Mr. Small indicated that there was no benefit to the public by configuring a public road on this property and that the creation of panhandles as proposed by the Applicant would have no adverse impacts. The necessity of creating the panhandles, in the opinion of this witness, is due to the unique topography and circumstances of this parcel, but is consistent with good planning practices in that it would reduce access points and it would reduce tree removal on the property.

The Department of Planning and Zoning, in its Staff Report dated February 20, 2001, also came to the conclusion that this property contains unique circumstances due to its shape and the location of the existing dwelling. The Department of Planning and Zoning found that the request, if approved, will not have an adverse impact on the neighborhood or the intent of the Code. In reviewing the removal of trees, the Department of Planning and Zoning found that the utilization of a cul-de-sac and private roads to serve these lots would result in a greater disturbance to the existing forest than the proposed panhandles.

There were no protestants who appeared in opposition to the subject application.

Case No. 5119 – Moran Properties LLCC

CONCLUSION:

The Applicant is requesting a variance, pursuant to Section 267-22G(1) of the Harford County Code, to permit more than one panhandle lot (3 panhandle lots proposed), in an R1, Urban Residential District.

Section 267-22G(1) of the Harford County Code provides:

“Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots.”

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Hearing Examiner finds that the property is topographically unique; the property is entirely wooded and the creation of panhandle lots would, in fact, serve the purpose of eliminating the need for removal of extensive areas of trees on the property. This would protect sensitive environmental features and protect the unique terrain that exists on this parcel. While it is true that a private road could be built and cul-de-sacs could be produced which would serve the property and create the necessary number of lots to secure a reasonable return on this property by the Applicant, Maryland Courts have long recognized that, “if property reasonably cannot be adapted to use in conformity with zoning ordinance restrictions due to unique circumstances, any hardship may be relieved through the variance procedure.” Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977).

Case No. 5119 – Moran Properties LLCC

To force the Applicant to reconfigure this parcel in a manner that avoids the need for a variance, that is, to create a public road and cul-de-sac to service this property, when the circumstances unique to this property can be alleviated by allowance to create two additional panhandle lots is not, in the opinion of the Hearing Examiner, a reasonable approach. In fact, to do so could be considered an unnecessary and unwarranted invasion of the basic rights of private property and would impose a hardship on the this Applicant that is unnecessary for protection of the public interest.

The Hearing Examiner recommends approval of the request, subject to the following conditions:

1. The Applicant shall submit a preliminary plan in accordance with the Subdivision Regulations to be reviewed and approved to the Development Advisory Committee.
2. Common drive shall be used so that no more than two (2) additional access points be located along Hookers Mill Road. The common drive that serves Lots 2 through 5 shall be located across from Barrens Road as shown on Attachment 3 to the Department of Planning and Zoning's Staff Report prepared in this case.
3. That Common drive agreements shall be submitted for review and approval and shall be recorded along with the final plat.

Date APRIL 19, 2001

William F. Casey
Zoning Hearing Examiner